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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/507,467

09/10/2004

Jan Van Der Linden

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24978 7590 10/28/2008

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CHICAGO, IL 60606

EXAMINER

STIGELL, THEODORE J

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

10/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/507,467	<b>Applicant(s)</b> VAN DER LINDEN ET AL.	
	<b>Examiner</b> THEODORE J. STIGELL	<b>Art Unit</b> 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-11,13,15 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11,13,15 and 17-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/19/2008 has been entered.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-7, 13, 15, 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Flower (3,520,300). Flower discloses a device that could supply gas to an area comprising a supply conduit (40), which is connected to a gas source (54) and which includes an outlet end (34), a porous body (32) made of a polyurethane foam rubber-like material (column 2, lines 20-25) provided at the outlet end, wherein the device is arranged to permit the supply of gas through the porous body, a filter (50) arranged on the supply conduit for filtering the supply of gas through the supply conduit, and an attachment member (22) including a first and second surface (28 and the

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outside surface of 22 respectively) and a sleeve (24) extending outwardly away from the porous body and being connected to the outlet end, and a continuous channel extending through the sleeve and first and second surfaces, wherein the porous body is attached to the first surface and wherein the outlet end is connected to the attachment member for transmitting the supply in a direction through the outlet end, the channel, and the porous body, wherein the first surface covers substantially the porous body as seen in the first direction, wherein the sleeve extends in a direction between 0-90 degrees, wherein the sleeve projects into the supply conduit (Figure 4), wherein the member and body are substantially circular in the first direction, wherein the porous body can be semispherical (Figure 6), wherein the device includes a homogenous body, wherein the gas can be carbon dioxide, and wherein the porous body is capable of supplying gas in a controlled flow and the device can be used to supply gas to a human or animal.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2, 4-6, 13, 15, and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heaton et al. (WO 99/13793) in view of Flower (3,520,300). Heaton discloses a device that could supply gas to an area comprising a supply conduit (catheter not shown, page 7, line 22), which is connected to a gas source (not shown) and which includes an outlet end, a porous body (73) made of a polyurethane foam rubber-like material provided at the outlet end, wherein the device is arranged to permit supply of gas through the porous body, the device includes an attachment member (30), which includes first and second surfaces (top and bottom surfaces of 30) and a channel extending therethrough and a sleeve (35,36) surrounding the conduit and projecting from the second surface, wherein the porous body is attached to the first surface by way of projections (32) and wherein the outlet end is connected to the attachment member for permitting the supply via the channel, wherein the porous body is about twice as thick as the attachment member (30), wherein the surface of the attachment member covers substantially the porous body as seen in the first direction, wherein the member and body are substantially circular seen in the first direction, wherein the device includes a homogenous body, wherein the gas can be carbon dioxide, and wherein the porous body is arranged to supply gas in a controlled flow and the device can be used to supply gas to a human or animal.

Heaton, therefore, discloses a device that includes most of the limitations recited in the claims listed above. Heaton does not teach to include a filter on the supply

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conduit. Flower discloses a suction device with a filter (50) positioned on the supply conduit for filtering liquid from the suctioned gas. The filter allows for the removal of excess, unwanted body fluids.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Heaton with the filter of Flower to provide a device that could filter off excess fluid from a wound area.

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flower (3,520,300) in view of Heimlich (3,672,372). Flower discloses all of the limitations as recited in claim 1, but does not teach to include a stiffening means in the form of a deformable wire in the conduit. Heimlich discloses a catheter that includes tubing (10) with wire stiffening means (36) disposed within the conduit. Heimlich teaches that the stiffening means is useful in avoiding kinking in the flexible catheter that would inhibit the flow of fluid. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the supply conduits of Flower with the limitations of Heimlich to make a supply conduit that was more resilient and less likely to kink while delivering gas to or suctioning gas from the body.

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heaton (WO 99/13793) in view of Flower (3,520,300) and further in view of Heimlich (3,672,372). Heaton and Flower disclose all of the limitations as recited in claim 1, but do not teach to include a stiffening means in the form of a deformable wire in the conduit. Heimlich discloses a catheter that includes tubing (10) with wire stiffening means (36) disposed within the conduit. Heimlich teaches that the stiffening means is

useful in avoiding kinking in the flexible catheter that would inhibit the flow of fluid.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the supply conduits of Heaton and Flowers with the limitations of Heimlich to make a supply conduit that was more resilient and less likely to kink while delivering gas to or suctioning gas from the body.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flower (3,520,300) in view of Wood (GB 2,220,357). Flower discloses all of the limitations of the independent claim but fails to disclose a filter configured to purify gas from particles and microorganisms. Wood discloses a suction system with a similar filter to Flower but further teaches including filter member to separate particles and bacteria. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Flower with filter member of Wood because it is known in the art of wound suction that filter members are useful in preventing the passage of bacteria and particles.

Claims 1-2, 4-7, 13, 15, and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al. (4,624,656) in view of Wagner (5,738,656). Clark discloses most of the limitations recited in the independent claim including a device (1) connected to a gas source (94) for the supply of gas to an area, a supply conduit (113) connected to the gas source and including an outlet end (end attached to 19), a porous, open-celled foam body (3, 32) made of a rubber-like material provided at the outlet end, an attachment member (19) including a first surface (long side of 19), a second surface (distal circular end of 19), and a sleeve (thickened proximal end of 19) extending

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outwardly away from the porous body and connected to the outlet end, and a continuous channel (lumen of 19) extending through the sleeve, first surface, and second surface, wherein the porous body is attached to the first surface, and wherein Clark contemplates different shapes for the porous body (see at least column 4, lines 61-63). Clark does not specifically teach to include a filter on the supply conduit.

Wagner discloses a device that includes a supply conduit (54) that supplies gas to the body from a gas source (82) that includes an in-line bacterial filter (62). One of ordinary skill in the art would recognize that the bacterial filter provides the advantage of preventing infection. It would have been obvious to one of ordinary skill in the art to include such a modification on the device of Clark to prevent bacterial infection of the treated skin lesions.

### ***Response to Arguments***

Applicant's arguments filed 12/7/2007 have been fully considered but they are not persuasive.

#### **Flower 3,520,300**

In response to the applicant's argument that Flower does not disclose a supply of gas to a surgical field, the examiner respectfully disagrees. The examiner maintains that suction pumps are capable in a reverse mode of delivering air rather than suctioning it off, just as any standard vacuum. The applicant counters this interpretation by arguing that one skilled in the art would not utilize a suction device in this manner because of the risk of contamination. However, this is not the issue at hand. The examiner contends that the claim requires a gas source (a source capable of supplying gas).



Even though the pump of Flower is not disclosed as being used in this way, the pump is capable of supplying gas and therefore meets this limitation.

In response to the applicant's argument that Flower does not disclose a filter, the examiner respectfully disagrees. The applicant has not specially defined "filter" in the specification and therefore the examiner has to give the broadest reasonable definition to the term. The examiner maintains that a filter is anything that separates elements that pass therethrough. Element (50) of Flower separates liquid from the gas flow and can be considered a filter. Furthermore, the examiner maintains that no matter what direction the pump is run, it is still capable of a separating function.

Heaton et al. (WO 99/13793) in view of Flower (3,520,300)

The examiner maintains that a prima facie case of obviousness has been established and that the combination is proper. Furthermore, the examiner maintains that Flower teaches a gas source and a filter.

Flower (3,520,300) and Heaton et al. (WO 99/13793) in view of Heimlich (3,672,372)

The examiner maintains that a prima facie case of obviousness has been established and that the combination is proper. Furthermore, the examiner maintains that Flower teaches a gas source and a filter.

### **Conclusion**

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THEODORE J. STIGELL whose telephone number is (571)272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Theodore J Stigell/  
Examiner, Art Unit 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763